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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12

13 LYNN BOLDEN and SANDRA
14 GIORGI, individuals, on behalf of
15 themselves, all other similarly situated,
16 and the general public

17 Plaintiffs,

18 vs.

19 WALMART INC., a Delaware
20 corporation,

21 Defendant.

Case No. 2:22-cv-04758-MEMF-KS

**DEFENDANT WALMART INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR TO
STRIKE PURSUANT TO FED. R.
CIV. P. 12(b)(6), 12(f)**

*[Filed Concurrently with Memorandum
of Points & Authorities, and
Proposed Order]*

Hearing Date: Nov. 17, 2022

Time: 10:00 A.M.

Courtroom: Courtroom 8B

Judge: Maame Ewusi-Mensah Frimpong

1 PLEASE TAKE NOTICE that Defendant, Walmart Inc. (“Walmart”), through
2 undersigned counsel, hereby moves this Court for an order dismissing all claims by
3 Plaintiff Lynn Bolden and Sandra Giorgi (together, “Plaintiffs”) as set forth in the Class
4 Action Complaint, filed by Plaintiffs on behalf of themselves and all others similarly
5 situated. Walmart also moves for an order to dismiss or strike the Nationwide Class,
6 and to dismiss the Injunctive Relief claims.

7 This Motion is made pursuant to Rules 9(b), 12(b)(6), and 12(f) of the Federal
8 Rules of Civil Procedure (“FRCP”), and is based on the grounds that Plaintiffs have
9 failed to support their allegations of false advertising and breach of warranty with
10 sufficient facts showing that Defendant falsely or misleadingly advertised product as a
11 weight loss solution. Moreover, Plaintiff does not sufficiently allege that the express
12 “weight management support” claim is false or misleading. In the absence of evidence
13 showing that Defendant’s product does not support weight management, Plaintiffs are
14 advancing a disfavored “lack of substantiation” theory. The Court should therefore
15 dismiss plaintiff’s claims in their entirety. *See Nathan v. Vitamin Shoppe*, No.: 3:17-
16 cv-01590, 2018 WL 828135, at *2 (dismissing claims regarding Garcinia Cambogia
17 “weight management” claims because label statements did not expressly promise
18 weight-loss benefits).

19 The Court should also dismiss or strike allegations concerning the nationwide
20 class, and dismiss Plaintiffs’ request for injunctive relief. Plaintiffs cannot proceed as
21 a nationwide class because California law will not apply to purchases made by non-
22 California residents in states other than California, and Plaintiffs advance claims
23 exclusively under California state law. Additionally, Plaintiffs lack standing for
24 injunctive relief because they have not alleged an imminent threat of future harm.
25 Plaintiffs would not plausibly rely on the Product’s label in determining whether to
26 purchase the product again in the future because they allege the product is worthless.
27 For these and other reasons explained in the accompanying memorandum of laws and
28 authorities, the Court should dismiss Plaintiffs claims with prejudice.

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2 DATED: October 3, 2022
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4 Respectfully submitted,
5 EMORD & ASSOCIATES, PC.
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7 By: /s/ Peter A. Arhangelsky
8 Peter A. Arhangelsky, Esq. (SBN 291325)
9 *Attorney for Defendant Walmart Inc.*
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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2022, the foregoing, **NOTICE OF MOTION AND MOTION TO DISMISS AND/OR TO STRIKE PURSUANT TO FED. R. CIV. P. 9(B), 12(b)(6), AND 12(f) and supporting documents** was electronically filed via the CM/ECF system and sent by that system to the following:

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